

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-18-10-2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and

The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Petition Nos. 37991 of 2002 and 1890 of 2003

and W.P.M.P.No. 2322 of 2003

W.P.No. 37991 of 2002

1. The Deputy Inspector General of Police, Thanjavur Range, Thanjavur.

... Petitioner.

Vs.

1. Moovendan, Sub-Inspector of Police, C.B.C.I.D., Thanjavur.
2. The Registrar, Tamil Nadu Administrative Tribunal, Chennai-104.

.. Respondents.

W.P.No.1890 of 2003

1. The Secretary to Government, Home Department, Fort St. George, Chennai-9.
2. The Director General of Police, Chennai-4.
3. The Deputy Inspector General of Police, Thanjavur Range, Thanjavur.

.. Petitioners.

Vs.

1. M. Moovendan,
Sub-Inspector of Police,
Crime Branch CID, Thanjavur.
2. The Registrar,
Tamil Nadu Administrative Tribunal
Chennai-104.

.. Respondents.

Writ Petitions have been filed under Article 226 of the Constitution of India (i) for issuance of a Writ of Certiorari calling for records pertaining to order dated 16-8-2001 made in O.A.No. 3661/1992 on the file of Tamil Nadu Administrative Tribunal, Chennai/2nd respondent herein and quash the same; and (ii) for issuance of a Writ of Certiorari, calling for records pertaining to the order dated 2-11-2001 made in O.A.No. 3754 of 1995 on the file of the Tamil Nadu Administrative Tribunal, Madras, 2nd respondent herein and quash the same.

Ms. Velumani, Govt., Advocate:- For petitioner in W.P.No.37991/2002; and for petitioners in 1890/20032.

Mr.G. Masilamani, senior counsel for Mr. R. Balasubramanian:- For 1st Respondent in both cases.

COMMON ORDER

(Order of Court was made by P. Sathasivam, J.,)

Aggrieved by the order dated 16-8-2001 of the Tamil Nadu Administrative Tribunal, Chennai made in O.A.No.3661/92, Deputy Inspector General of Police, Thanjavur Range has filed the above writ petition.

2. According to the petitioner, the first respondent herein was directly recruited as Sub Inspector of Police on 01-11-79. While he was working as Sub Inspector of Police in SB-CID from 02-07-73 to 15-02-85 had been keeping one Pushpam as his concubine and through her he has got a male child by name Manimaran on 12-07-84. It is further stated that when he was also having a family as on 15-04-84, he married one Santha of Pattukottai. A preliminary enquiry was held by the CB-CID and as

per the instructions of the Director General of Police, a charge memo dated 20-10-87 under Section 3 (b) of TNPSS (D&A) Rules was issued. The said charge memo was challenged before the Tamil Nadu Administrative Tribunal. By the impugned order dated 16-08-2001, the Tribunal after going through the charge memo and finding that it does not attract the mischief of Rule 23 of Tamil Nadu Police Subordinate Officers Conduct Rules, set aside the charge memo. Questioning the same, the present writ petition has been filed.

3. Heard the learned Government Advocate for the petitioner as well as learned senior counsel for the first respondent.

4. In order to consider the claim of the petitioner, the stand taken by the first respondent and the impugned order of the Tribunal, it is useful to refer the charge memo which reads as under:

"CHARGE MEMO

Delinquent: Thiru M. Moovenden, Sub Inspector of Police, formerly Kuthalam PS, now Kordacherry Police Station.

1) Charge Reprehensible and unbecoming conduct of a Police Officer in having been keeping one Pushpam, D/o Sowrimuthu a maternity Assistant of Kumbakonam Municipality as his concubine before his marriage with his wife Tmt. Santha on 15-04-84 and in having be got one male child named Selvan Manimaran through her and thereby involved himself in an act of moral turpitude and violated rule 23 of Tamil Nadu Government Servants Conduct Rules."

Since the above charge memo proceeds that the conduct of the police officer is in violation of Rule 23 of the Tamil Nadu Police Subordinate Officers Conduct Rules, it is also relevant to refer the said rule:

"Rule 23. Bigamous Marriages

1. (a) No Police Officer shall enter into a contract marriage with a person having a spouse living; and (b) No Police Officer having a spouse living shall enter into or contract a marriage with any person;

Provided that the Government may permit a Police Officer to enter into or contract any such marriage as is referred to in clause (a) or clause (b) if they are satisfied that,

(i) such marriage is permissible under the

personal law applicable to such Police Officer and the other party to the marriage; and
(ii) there are other grounds for so doing."

As rightly observed by the Tribunal and argued by the learned senior counsel for the first respondent, even as per the charge memo, the said Pushpam was not married and the police officer was also not married and the allegation is that both of them had intimate relationship with each other. The police officer being a Hindu, in the absence of marriage prior to the allegation of intimacy with one Pushpam, cannot be a mis-conduct, particularly within the mischief of Rule 23 of the Rules which we have already extracted above. As rightly pointed out by the Tribunal, the applicant/police officer has not been charged for having conducted a bigamous marriage which is prohibited by Rule 23. As said earlier, the charge proceeds that the said officer had intimacy with one Pushpam as his concubine before his marriage with his wife Tmt. Santha. In such a circumstance, we are of the view that even Rule 23 does not apply in respect of the charge framed against the applicant.

5. Learned Government Advocate by drawing our attention to sub-rule (2) of Rule 23, would contend that since the act of the police officer having intimacy with another lady which amounts to involving moral turpitude, the department is justified in taking action against him. She also contended that the applicant is free to put-forth all his objections in the proposed enquiry and the Tribunal is not justified in interfering at this state and setting aside the charge memo. We are unable to accept the said contention also. The newly inserted sub-rule (2) of Rule 23 reads as under:

"2. No Police Officer shall involve himself in any act involving moral turpitude on his part including any unlawful act, which may cause embarrassment or which may bring discredit to Government.

(G.O.Ms.No. 1015, Home (Pol.VI) Dept., dated 07-07-1993)

It is brought to our notice that the sub-rule 2 was inserted by the Government in G.O.Ms.No. 1015, Home Department dated 7-7-1993 and the same was notified on 25-8-93. As said earlier, the charge memo is dated 6-5-1992. In such a circumstance, the said amended provision cannot be applied to the charge levelled against the police officer.

6. The Tribunal, after considering all these aspects, has rightly concluded that the conduct of the applicant in having intimacy with an unmarried girl before his marriage would not

amount to misconduct within the meaning of the enumerated misconduct in the service rules. We have already referred to Rule 23 which deals only with the Government servant who has conducted a bigamous marriage. We are in agreement with the conclusion arrived by the Tribunal and we do not find any error or infirmity for interference. Consequently, the writ petition fails and the same is dismissed. No costs. In view of the dismissal of W.P.No. 37991/2002, the other writ petition, namely, W.P.No. 1890-2003 is also liable to be dismissed; accordingly dismissed. W.P.M.P.No. 2322/2003 is also dismissed.

R.B.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

The Registrar,
Tamil Nadu Administrative Tribunal
Chennai-104.

2 cc To Mr.R.Balasubramanian, Advocate SR 42195 & 42194.
2 cc To The Government Pleader SR 42068 & 42069.

Common Order in W.P.
Nos.37991/2002 & 1890/2003
and WPMP NO.2322/2003.

TS (CO)
RVL 26.10.05

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